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JGJr: 07-05

Paper No: ____

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JUL 28 2005

OFFICE OF PETITIONS

In re Application of
Feldman et al.
Application No. 10/661,437
Filed: 12 September, 2003
Attorney Docket No. 12008.32USC6

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: ON PETITION
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This is a decision on the petition filed on 23 May, 2005, considered under 37 C.F.R. §1.53, to obtain a filing date of 12 September, 2003, for Fig(s). 18A-C, as described in the specification.

For the reasons set forth below, the petition is **GRANTED in part** and **DISMISSED in part**.

NOTE: Docketing of Status Inquiries at six- (6-) month intervals following the filing of papers/replies may be prudent practice to demonstrate diligence when lengthy delays occur in matters such as this.

BACKGROUND

After this application was deposited on 12 September, 2003:

- Petitioner filed a Status Inquiry on 5 January, 2005;
- on 12 May, 2005, the Office mailed a Notice requesting that the Petitioner submit copies of the drawings deposited with the original application;
- on 13 May, 2005, the Office mailed a Notice of Omitted Items reflecting the absence of Fig. 18A-C, as described in the specification, and indicated that Petitioner's alternatives were to:
(a) file a petition if Petitioner contended that the item(s) deemed omitted had been deposited

with the application, (b) supply the omitted item(s) and accept as the filing date that of the new deposit, or (c) file no response and accept the application as deemed by the Office to have been filed;

- on 20 May, 2005, Petitioner filed his response to the request for duplicate drawings;
- on 23 May, 2005, Petitioner filed the instant petition (with fee), *inter alia*, a copy of the date-stamped ("09/12/03") receipt card (see: MPEP §503¹), a copy of the drawing sheet averred to be Fig. 18A-C submitted with the original 12 September, 2003, deposit, and a request for refund of the petition fee.

Analysis

A search of the official file reveals that:

- on 12 September, 2003, Petitioner deposited the instant application;

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

- the date-stamped receipt card evidences the following, in pertinent part:

* * *

X The Application is as follows: 98 pages of specification, 17 claims, 1 page of abstract, 28 sheets of drawings, and 5 pages of oath or declaration.

* * *

Because Petitioner's receipt card adequately itemized the contents of the application on the receipt card, it is concluded that the application, including Fig(s). 18A-C, as described in the specification, was deposited with the Office on 12 September, 2003, and Fig(s). 18A-C, as described in the specification, subsequently were misplaced in the Office.

Moreover, a review of the file indicates that Fig(s). 18A-C is present and received a filing date of 12 September, 2003.

Accordingly, Fig(s). 18A-C are entitled to a filing date with the application as filed.

The Notice of Omitted Items mailed on 13 May, 2005, was sent in error and is hereby vacated to the extent that it stated that pages/sheets—to wit: Fig(s). 18A-C, as described in the specification, had been omitted.

CONCLUSION

The petition is **granted in part to the extent that the Notice of 13 May, 2005, is vacated** and the petition fee waived and refunded via Treasury check; in all other respects the petition is **dismissed as moot** because the requested filing date already is of record in the Office for Fig(s). 18A-C.

This application is released to OIPE for further processing:

- **with a filing date of 12 September, 2003, for the entire application and in particular for the specification (102 pages: description, claims and abstract), and 28 sheets of drawings, including Fig(s). 18A-C, as described in the specification, using: 102 pages of specification (description, claims and abstract), and the 28 sheets of drawings (Figs. 1 - 31B), including Fig(s). 18A-C, deposited on 12 September, 2003; and further**
- **with direction to OIPE to correct Office records and provide to Petitioner a corrected filing receipt setting forth a filing date of 12 September, 2003, and reflecting therein that 102 pages of specification (description, claims and abstract) and 28 sheets of drawings were present on filing.**

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3214.

A handwritten signature in black ink, appearing to read 'John J. Gillon, Jr.', with a stylized, cursive script.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions